

*** NOT FOR PUBLICATION ***

NO. 26093

IN THE SUPREME COURT OF THE STATE OF HAWAII

PACIFIC ISLE DELIVERY and EAGLE PACIFIC INSURANCE, COMPANY,
Plaintiffs-Appellees

and

WENDELL GAUI, Plaintiff-Appellant

vs.

REGINALD CHUN FAT, JOHN DOES 1-10, JANE DOES 1-10, DOE
CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE GOVERNMENTAL
ENTITIES 1-10 and DOE NON-PROFIT ENTITIES 1-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-3428)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that the first amended complaint filed in Civil No. 00-1-3428 was finally adjudicated by entry of the May 15, 2003 stipulation dismissing the complaint with prejudice. Entry of the May 15, 2003 stipulated dismissal constituted entry of final judgment in Civil No. 00-1-3428. The proceeding to apportion the settlement proceeds was a post-judgment proceeding in Civil No. 00-1-3428 that was finally determined by entry of the July 8, 2003 order apportioning the settlement proceeds. The July 8, 2003 order ended the post-judgment apportionment proceeding and was a final order appealable within thirty days after it was entered. See HRS § 641-1(a); HRAP 4(a)(1); Familian Northwest Inc. v. Central Pacific Boiler & Piping, Ltd., 68 Haw. 368, 370, 714 P.2d 936, 937 (1986). The August 22, 2003 stipulation for dismissal purported to dismiss "all remaining claims" and "all remaining parties," but there were no remaining claims or remaining parties

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to be dismissed following entry of the July 8, 2003 order. Entry of the August 22, 2003 stipulation for dismissal was superfluous and did not affect the time for appealing the July 8, 2003 order. The September 17, 2003 notice of appeal was filed more than thirty days after entry of the July 8, 2003 order and is an untimely appeal of the July 8, 2003 order. The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Thus, we lack jurisdiction over this appeal. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, Janaury 6, 2004.